

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION
NON-JURY

BERTSCHI GLOBAL AG,)	CIV. ACTION NO. 3:23-cv-05838-MGL
)	
Plaintiff,)	
)	COMPLAINT
vs.)	
)	
G & W TANKS, LLC)	
)	
Defendant.)	
_____)	

Plaintiff, Bertschi Global AG (hereinafter referred to as “BERTSCHI”), by and through its undersigned counsel, hereby brings this civil action against Defendant, G & W Tanks, LLC (hereinafter “G&W”), and alleges:

GENERAL ALLEGATIONS

1. This instant action is a claim for monetary damages within the jurisdictional requirements of this Court in that it seeks recovery of damages in excess of \$75,000.00. Furthermore, the Court has subject matter jurisdiction pursuant to 28 USC Section 1332 as the Plaintiff and Defendant are diverse as more fully alleged below.
2. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(a)–(d).
3. Plaintiff BERTSCHI is a corporation organized under the laws of Switzerland with its principal place of business in Dürrenäsch, Switzerland.
4. Defendant G&W is a limited liability company organized under the laws of the State of

South Carolina with its principal place of business in Lexington, South Carolina. Upon information and belief, the members of the Defendant LLC are corporate or individual residents of one or more of the United States.

5. At all times material to this complaint, BERTSCHI provided global logistics and transportation services for the chemical industry, including Arxada AG f/k/a Lonza Solutions AG (hereinafter “ARXADA”).
6. At all times material to this complaint, Defendant G&W performed transportation services for shippers of bulk liquid cargo, including the Plaintiff and its customers.
7. In or about August of 2021, BERTSCHI agreed to arrange for the transportation in its ISO bulk tank container BGBU 514224-3 (hereinafter “the Container”) of a shipment of a liquid cargo, Vantocil P (an EPA registered biocide), owned by its customer ARXADA (hereinafter “the Cargo”) from Switzerland to Alpharetta, Georgia. The Cargo had an invoice value of \$123,510.00.
8. This shipment was carried overland to the Port of Antwerp where it was loaded on a vessel bound for the Port of Savannah, Georgia.
9. After its discharge in Savannah on November 11, 2021, BERTSCHI contracted with G&W to transport the Cargo by road from the Port to its ultimate destination of Advantis Technologies, 1400 Bluegrass Lakes Parkway, Alpharetta, Georgia.
10. Contrary to the instructions from BERTSCHI, G&W delivered to the shipment to a third party tank storage facility operated by Zimmer & Schwartz (“Z&S”) in Milledgville, GA, on 24th November 2021.
11. Before loading was interrupted by Z&S, G&W had unloaded a significant portion of the Vantocil P into a tank containing a different chemical, Tridecanol (Tridecyl Alcohol). In

order to rid themselves of the contamination in their own storage tank, Z&S ordered G&W to pump back the comingled/contaminated Cargo back into BERTSCHI's Container.

12. G&W then brought the Container containing the contaminated Cargo to its own facility in Savannah pending its eventual disposition.
13. ARXADA explored the potential of "reworking" its product to salvage some value, but ultimately concluded that it would be impossible to do so and officially abandoned the Cargo in August of 2022.
14. ARXADA interposed a claim against BERTSCHI for damages arising from the loss of the Cargo which claim was settled by BERTSCHI on June 26, 2023 for the amount of \$26,549.20. Under the terms of this settlement, ARXADA assigned all rights relating to its claim to BERTSCHI.
15. Due to the toxic and environmentally hazardous nature of the contaminated cargo, BERTSCHI had to arrange for its safe disposal which was not completed until May of 2023. BERTSCHI incurred costs of \$57,384.19 for surveying, disposal and Container cleaning costs.
16. BERTSCHI lost the use of its Container during this period. The fair market value of the loss of use of this specialized equipment is \$24,930.00.
17. G&W also charged BERTSCHI \$8,328.50 for the storage of the Container prior to the disposal of the contaminated Cargo.
18. Despite having timely received a claim for the subject damages, G&W has failed to pay or otherwise indemnify BERTSCHI for the subject loss proximately resulting in the damages asserted herein in the total amount of \$117,191.89.

COUNT I

INDEMNITY

19. Plaintiff repeats and re-alleges the allegations contained in Paragraphs one (1) through eighteen (18) as if fully repeated herein verbatim.
20. The damages detailed above were proximately caused by G&W's failure to deliver the Cargo according to the instructions from BERTSCHI and no act or omission on the part of the Plaintiff contributed to contamination of the Cargo and the Container.
21. Based on the foregoing, BERTSCHI is entitled to be indemnified by G&W for its losses relating to the misdelivery of the shipment and the contamination of the Cargo and the Container.

COUNT II

BREACH OF STATUTORY DUTIES UNDER THE ICC TERMINATION ACT
(FORMERLY KNOW AS THE CARMACK AMENDMENT
49 U.S.C. SECTION 14706, et seq)

22. Plaintiff repeats and re-alleges the allegations contained in Paragraphs one (1) through twenty-one (21) as if fully stated herein verbatim.
23. In November 2021, G&W agreed to undertake the transport of the Cargo from Savannah to Alpharetta, Georgia.
24. G&W undertook common carrier of goods for hire obligations, and as such owed a statutory duty to the Cargo owner and to the Plaintiff as the entity which made the arrangements on behalf of the owner for the transportation of the Cargo.
25. G&W undertook to carry the subject Cargo and accepted the Cargo in apparent good order and condition.

26. G&W owed to the Cargo owner and to the Plaintiff a non-delegable statutory duty to act in a commercially reasonable manner and to properly supervise their employees and any sub-agents or subcontractors furthermore, as well as to properly retain said employees and subagents or subcontractors.
27. G&W further owed to the Cargo owner and to the Plaintiff a statutory duty to deliver the Cargo in the same good order and condition as it was delivered.
28. Defendant breached its duty of care as follows:
 - a) Failing to properly deliver the subject Cargo;
 - b) Failing to properly handle the Cargo resulting in the contamination of the Cargo and the Container;
 - c) Failing to properly supervise its employees, subagents, or subcontractors;
 - d) Failing to properly select or retain its employees, subagents, or subcontractors;
29. As a result of this breach, the Cargo owner and the Plaintiff has been damaged within the jurisdictional requirements of this Court.
30. ARXADA, the Cargo owner, has assigned its rights to recover for these damages to BERTSCHI.
31. Based on the foregoing, BERTSCHI is entitled to recover the invoice value of the Cargo together with the other damages detailed above for the total amount of \$214,152.69.

WHEREFORE, BERTSCHI respectfully requests that the Court enter Judgment in favor of BERTSCHI against G&W together with an award of costs, fees, and any other further relief the Court deems just and equitable.

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